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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,499	10/05/2005	Pierre Dufresne	PET-2164	7333
7550 10/30/2008				
Millen White Zelano & Branigan Arlington Courthouse Plaza I 2200 Clarendon Boulevard Suite 1400 Arlington, VA 22201				
EXAMINER				
HAILEY, PATRICIA L				
ART UNIT		PAPER NUMBER		
1793				
MAIL DATE		DELIVERY MODE		
10/30/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,499

Applicant(s)

DUFRESNE ET AL.

Examiner

PATRICIA L. HAILEY

Art Unit

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Applicants' remarks and amendments, filed on July 7, 2008, have been carefully considered. Claims 2 and 3 have been canceled; no claims have been added.

Claims 1 and 4-20 remain pending in this application.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Applicants' Priority Document was filed on March 4, 2005.

Withdrawn Rejections

The 112(2) rejection of claims 11-15 stated in the previous Office Action has been withdrawn in view of Applicants' amendments thereto.

The 103(a) rejections of claims 1, 6-8, 11-16, and 18-20 as being unpatentable over Dufresne et al. (U. S. Patent No. 5,922,638), and of claims 3-7, 9, and 10 as being unpatentable over Dufresne et al. (U. S. Patent No. 5,922,638) as applied to claims 1, 6-8, 11-16, and 18-20 above, and further in view of Dufresne (U. S. Patent No. 6,059,956, Applicants' submitted art), have been withdrawn in view of Applicants' amendment to claim 1.

Withdrawn Indication of Allowable Subject Matter

2. The indicated allowability of claim 2 (stated in the previous Office Action) is withdrawn in view of the Examiner's reconsideration of the cited references of record.

New Grounds of Rejection

The following New Grounds of Rejection are being made in view of the Examiner's reconsideration of the cited references of record.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Objections

3. *Claim 1 is objected to because of the following informalities:*

Lines 2 and 3 of claim 1 respectively recite the terms "sulfurized" and "sulphurized". It is respectfully requested that one of these terms be amended so that the terms be identical.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. *Claims 1 and 4-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dufresne et al. (U. S. Patent No. 5,922,638) in view of Dufresne (U. S. Patent No. 6,059,956).*

Dufresne et al. teach a process for ex-situ sulfurization of a catalyst, wherein the catalyst is brought into contact with a presulfurizing agent that contains elemental sulfur and an organic liquid, examples of which include gas oils and fatty acid triglycerides. See col. 2, line 52 to col. 3, line 39 (considered to read upon **claims 11-15, 18, and 20**, as well as the limitation “sulphurized catalyst” in **claim 1**).

After sulfurization, the catalyst may be subjected to ex-situ activation, followed by passivation treatment. This treatment can be carried out by passing an oxidized gas flow through the catalytic mass (considered to read upon the “first step” of **claim 1**). See col. 5, line 62 to col. 6, line 13 of Dufresne et al. (considered to read upon **claims 6 and 7**), which also discloses that the catalyst is kept in motion during the activation stage, for example by carrying out activation in a rotary reactor tank (**claim 8**).

Example 1 of Dufresne et al. depicts an embodiment wherein a catalyst comprising CoO and MoO₃ is subjected to sulfurization (considered to read upon **claims 16 and 19**).

Although Dufresne et al. do not explicitly disclose an “ex situ oxidizing passivation” process, as instantly claimed, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of Dufresne et al. by incorporating therein Patentees’ passivation treatment, motivated by the teachings of Dufresne et al. that such a treatment can be performed on the presulfurized catalyst disclosed therein.

Dufresne et al. does not explicitly teach the subsequent step of contacting the catalyst with at least one organic liquid after contact with an oxidizing gas stream.

Dufresne teaches a pretreatment or activation process for a hydrocarbon hydroconversion catalyst, involving off-site incorporation into the catalyst of at least one sulphuration agent and/or at least one other suitable solvent (e.g., a triglyceride of unsaturated fatty acids such as vegetable oils). See col. 2, line 13 to col. 3, line 4 of Dufresne (considered to read upon the “second step” of **claim 1**).

The process also involves off-site treatment with pure or diluted hydrogen under conditions such as fixed, mobile, expanded, or fluidized bed to maximize homogeneity in the distribution of the sulphuration agent (considered to read upon **claims 9 and 10**), and also ex situ passivation, wherein a stream of oxygen and/or a stream of air are passed over the catalyst (considered to read upon the “second step” of **claim 3**). Contact of the catalyst with oxygen may be made in two stages or several stages (considered to read upon **claims 4-7**; the partial pressures recited therein are considered to be process optimization parameters). See col. 3, lines 5-61 of Dufresne.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the process of Dufresne et al. by incorporating therein the process of Dufresne, because the ex situ passivation disclosed by Dufresne eliminates the pyrophoric tendency of the catalyst's sulphide phases, and also positively affects the catalyst's activity. See col. 4, lines 40-44 of Dufresne.

The combination of these references as set forth above are considered to read upon Applicants' claimed steps of contacting a sulfurized catalyst with at least one oxidizing gas stream, and contacting the catalyst with at least one organic liquid. Although Applicants' claims refer to these steps as "first" and "second" steps, the claims in their present form do not require that these steps must be performed immediately sequentially (i.e., that the contact with the organic liquid *immediately* follows contact with the oxidizing gas stream).

Further, it has been held that selection of any order of performing process steps is prima facie obvious in the absence of new or unexpected results, see MPEP 2144.04, section C, and also In re Burhans, 154 F.2d 690, 69 USPQ 330 (CCPA 1946), and In re Gibson, 39 F.2d 975, 5USPQ 230 (CCPA 1930).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICIA L. HAILEY whose telephone number is (571)272-1369. The examiner can normally be reached on Mondays-Fridays, from 7:00 a.m. to 3:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo, can be reached on (571) 272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group 1700 Receptionist, whose telephone number is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PATRICIA L. HAILEY/
Examiner, Art Unit 1793
October 27, 2008